

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-17-79-RAW
)	
HENRI MICHELLE PIETTE,)	
)	
Defendant.)	

**RESPONSE IN OPPOSITION TO DEFENDANT’S
MOTION FOR PERMISSION TO TAKE DEPOSITIONS**

COMES NOW the United States of America by and through undersigned counsel and files this Response in Opposition to Piette’s Motion for Permission to Take Depositions (Doc. 124). The Court should deny the Motion because the Defendant has failed to establish that there are exceptional circumstances and that the taking of depositions would be in the interest of justice.

FACTS

On April 23, 2019, the Defendant filed a Motion for Permission to Take Depositions. In his filing, he asserts that there is a witness in Mexico, Julie Cruz Lopez, whose address he does not provide. The Defendant states that Ms. Lopez “has no visa or passport to travel to the United States for a trial”. The Defendant also requests that the Defendant’s uncle, Allen Roundy, be deposed. Defendant asserts that “Roundy suffers from a medical condition that makes it impossible to attend trial”.

LAW

Federal Rules of Criminal Procedure, Rule 15 provides:

(a) When Taken.

(1) In General. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest

of justice. If the court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

The Defendant bears the burden of proving that exceptional circumstances exist which justify the taking of the deposition as required by Fed.R.Crim.P. 15(a). *See United States v. Drogoul*, 1 F.3d 1546, 1552–53 (11th Cir.1993) (placing burden on proponent of depositions to satisfy Rule 15(a)).

ARGUMENT

The Defendant offers no details or evidence in support of his assertions. The Defendant offers no indication as to what efforts Julie Cruz Lopez has undertaken to obtain a visa to travel to the United States. The Defendant claims that Ms. Lopez was discovered by his investigator; however, the Defendant has been aware of Ms. Lopez since at least June 24, 2018, as evidenced by a letter to the Court written by Defendant's cellmate. (Doc# 54). The Defendant has failed in his burden of demonstrating exceptional circumstances by making a request for deposition, but failing to provide any evidence of what efforts have been made to have the witness travel to the United States. In addition, the Defendant has not shown an inability to locate any other witness in Mexico or the United States who could testify as to the same facts as Ms. Lopez.

The Defendant also alleges that Allen Roundy should be deposed. Mr. Roundy has written letters to the Court and the Government. He has also continued to send the Defendant's letters to the Court in an apparent attempt to circumvent the Court's orders regarding Defendant's communications. The Government does not dispute that Mr. Roundy is elderly; however, there is no evidence as to the extent or nature of his medical condition. Exceptional circumstances simply cannot be demonstrated without the submission of a doctor's statement, diagnosis, or records which indicate the true nature of the "medical condition" and which contain sufficient, reliable, and relevant information in support of an exceptional circumstances finding.

CONCLUSION

Based on the foregoing reasoning and authority, the Government respectfully urges the Court to deny Defendant's Motion for Permission to Take Depositions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, hereby certify that on April 23, 2019, I electronically transmitted the attached documents to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrant:

Warren Gotcher

s/ D. Edward Snow
Office of the United States Attorney